IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-02-2005

CORAM:

THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

S.A.No.208 of 1994

Muthuswamy ...Appellant/ Defendant

-vs-

1. Siddhan
2. Thangarajan
3. Marimuthu
4. Chinnaponnu

... Respondents/ Plaintiffs

PRAYER: The Second Appeal is filed under section 100 of C.P.C. against the judgment and decree dated 15.02.1993 passed in AS.No.37 of 1992 on the file of the Subordinate Judge, Sankari, on appeal from the judgment and decree dated 27.01.1992 passed in O.S.No.1001 of 1988 on the file of the District Munsif, Sankari.

For Appellant : Mr.S.Jayaraman
For Respondents : Mr.P.Jagadeesan

...

J U D G M E N T

The Second Appeal is directed against the judgment dated 15.2.1993 in A.S.No.37 of 1992 decreeing the suit for damages granting a sum of Rs.1,000/- out of Rs.4,000/- claimed, by reversing the judgment dated 27.1.1992, passed by the learned District Munsif, Sankari dismissing the suit for damages in O.S.No.1001 of 1988.

2. While admitting the second appeal, the following question of law was framed:

> " Whether the judgment of the lower Appellate Court reversing that of the Trial Court is vitiated by its failure to apply the correct principles of law while considering the evidence in particular Ex.X.1."

3. This is a suit for malicious prosecution contending

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that defendant had prosecuted the complaintant maliciously. True it is, there was a complaint preferred by defendant under Ex.A.3 informing that at 6.00 p.m. on 28.12.1983, Thaila Goundar, the father of plaintiffs 1 to 3 and the husband of 4th plaintiff along with the 4th plaintiff waylaid the defendant, snatched his cycle and that thereupon the other plaintiffs 1 to 3 assaulted him. This complaint was registered as First Information Report under Ex.A.2 by the concerned police. There was an investigation during which, the third plaintiff has given a confession under Ex.X.1. Ex.B1 is the deposition of the complainant in that case as P.W.1. He is none but this defendant. Through his evidence, he has supported the version of his F.I.R. and the charge sheet marked as Exs.A.2 and A.3 respectively.

3. The learned counsel for the respondents/plaintiffs drew my attention to the judgment of the District and Sessions Judge, Salem, wherein the complaint of the present defendant culminated into a sessions case in S.C.No.162/84, and in paragraph 11 of the Judgment of which a mention was made as if Thaila Goundar, who was arrayed as first accused before that court was suffering from leprosy and that with great difficulty, he was brought to court. After seeing that there were no fingers in both of his hands, the court opined that he could not have assaulted as informed or reported by the present defendant in his earlier complaint. Similarly the confession statement of present third plaintiff was also not relied upon as the person who recorded it viz., the Head Constable in his evidence contended that there was no light in the area where the confession was recorded. The Sessions Court opined and surprised as to how the Head Constable can record the confession in an area where there was no light at all. There were also other discrepancies in the evidence of P.W.1, as if all the five had assaulted, which is inconsistent with the complaint which states that only three had assaulted. For all these reasons, the court preferred to acquit the accused.

4. But in paragraph 12 of the Judgment, it was found that the prosecution case was found not proved. Even in paragraph 13, the order of acquittal was made that the case against the accused was found not proved. It is true, as pointed out by the learned counsel for the respondents/plaintiffs that the acquittal was not based upon benefit of doubt. But, it was only based upon the untrue nature of the criminal case.

5. The question now arises as to whether this will immediately entitle the plaintiffs to file a suit for malicious prosecution and whether they can be successful in it.

6. The law on this point was quoted by the Trial Judge, by

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culling out such portion from MITTER'S LAW OF DEFARMATION AND MALICIOUS PROSECUTION (CIVIL AND CRIMINAL), Part II, Chapter-I, page 274, which is as follows:-

> "The onus to prove the baseless and frivolity of the complaint lies on the plaintiff in the civil suit for damages to show that the complaint was either frivolous or baseless. It is a well settled principle of law that whosoever alleges that a certain thing has happened has to establish that thing has happened. If the plaintiff in a suit for torts alleges that the complaint against him was lodged on account of malice, he has to establish it because the complaint having been dismissed either in default or on merits would not by itself give rise to an inference that the complaint was based on baseless and frivolous material and was lodged on account of malice. The Civil Court would not be bound by the order of the criminal court as far as the malice and baselessness of the facts alleged in the complaint go. The Civil court would come to its own conclusion on the basis of the evidence recorded by it in a suit for damages."

7. It has also been held in A.I.R.1933 Madras Page 429 (Pedda Venkatapathi vs. Ganagunta Balappa) that the Civil Court shall undertake independent enquiry and not take into consideration the grounds of acquittal in criminal court, as was held in AIR 1958 Patna Page 329 (Nagendra Kumar vs. Etwari Sahu) and AIR 1969 Patna Page 102 (Satdeo Prasad vs. Ram Narayan) that the finding by the criminal case is not conclusive proof of the malicious prosecution and malicious intention is to be proved by the plaintiff.

8. Thus, it is found that in case of independent enquiry in criminal proceedings, one should prove the malicious intention of the complainant. Counsel for the respondents/plaintiffs again pointed out that it was not by giving benefit of doubt the acquittal in the criminal court was made, but it was only making a finding that the case of defendant in that criminal proceedings was untrue. As against this, there is a confession made by Marimuthu, third plaintiff, in the earlier proceedings. Of course, that confession was recorded by a Head Constable, who was examined as D.W.2 under the provisions of Section 25 of the Evidence Act. Even though, that by itself is not admissible, subject to Section 27 of the

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Evidence Act in a criminal proceedings, it becomes admissible in a civil proceedings like this as was so held in A.I.R.1954 Punjab 27 (Mahanta Singh vs.Het Ram) and I.L.R.9 Bombay 131 (Queen Empress vs Tribhovan Manekchand). Even if it was construed as only a statement under Sec. 161, even then it becomes admissible in civil forum under Section 21 of the Evidence Act as found in A.I.R.1966 Madras 392 (Pattammal vs. M.Munuswami) and 1989 1 Law Weekly 315 (Dharman vs. N.C.Srinivasan). So, de hors as to whether it was a statement under Sec. 161 Cr.P.C. or Sec.25 of Evidence Act, it becomes admissible in civil proceedings like the instant one. As a matter of fact, the person who recorded also was examined as D.W.2. Therefore, it becomes admissible. It is in that statement, Marimuthu, the third plaintiff contended as if his parents Thaila Goundar and Chinnaponnu waylaid present defendant Muthusamy and at that time all the three plaintiffs have assaulted him. This only makes the complaint of defendant reasonable if not real. When such reasonability is set forth, it can no more be unreasonable complaint so as to form basis for malicious prosecution and so the claim for damages upon malicious prosecution fails. Therefore, the second appeal is allowed setting aside the decree passed by the First Appellate Court and restoring the decree passed by the Trial Court. The question of law is answered in favour of the appellant. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Subordinate Judge,
   Sankari.

2. The District Munsif,
   Sankari.

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3. TheSection Officer
V.R.Section.
High Court, Chennai 104.

+ One CC to Mr.S.Jayaraman, Advocate (SR No.6153)

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